

**FLUOR FERNALD, INC  
GENERAL PROVISIONS FOR COMMERCIAL ITEMS  
JANUARY 2000  
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## **NAME CHANGE**

On August 28, 1996, Fernald Environmental Restoration Management Corporation's (FERMCO) name was changed to Fluor Daniel Fernald, Inc. (FDF). As of January 10, 2000, FDF's name was changed to Fluor Fernald, Inc. (Fluor Fernald). All references herein to FERMCO or FDF are understood to refer to the same corporation whose name is now Fluor Fernald. Similarly, any references to FERMCO or FDF in correspondence, memoranda or other writings arising under, relating to or otherwise required by any provision of this contract will be understood to refer to Fluor Fernald as one and the same corporation.

## **PREAMBLE**

- (a) Pursuant to the terms of Contract DE-AC24-92OR21972, Fluor Daniel Fernald (FDF) has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, FDF is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of FDF.
- (b) The Seller shall furnish the goods and/or services covered by the contract subject to all the terms and conditions set forth in the contract including the following, which the Seller, in accepting the contract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of goods or the performance of all or any portion of the services covered by the contract shall constitute unqualified acceptance of all FDF terms and conditions. The terms of any quotation referred to in the contract are included and made a part of the contract only to the extent of specifying the nature of the goods or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the contract.
- (c) This form incorporates one or more FAR clauses by reference. The version of the FAR clause in effect as of the effective date of the contract shall apply with the same force and effect as if they were given in full text. Upon request FDF will make the full text of the clauses available.

## **1.0 ASSIGNMENT**

Neither this contract nor any portion hereof shall be assigned or delegated without FDF's prior written consent and any such assignment or delegations shall be void. FDF reserves the right to assign this contract to DOE or its designee, and in case of such assignment and notice thereof to the Seller, FDF shall have no further responsibility, hereunder.

## **2.0 ASSIGNMENT OF FORMER FDF EMPLOYEES FOR CONTRACT WORK**

- (a) The Seller shall not direct charge any costs to this contract arising from work or tasks performed by any former FDF employee who was separated voluntarily from FDF pursuant to the FY 1995 Fernald Environmental Management Project (FEMP) Work Force Restructuring Plan for a period of five years from the effective date of former employees' retirement or voluntary separation.
- (b) The Seller shall provide written certification of compliance with the provisions of this clause upon request of FDF.
- (c) If the Seller fails to comply with the provisions of this clause, this contract may be terminated for default in accordance with the contract clause entitled "Termination for Default".
- (d) The Seller shall insert the provisions of this clause, including this paragraph (d) in all subcontracts hereunder.

## **3.0 CHANGES**

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

## **4.0 COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS AND SUBCONTRACTS**

The Seller acknowledges that work performed under this contract is done as work subcontracted by FDF under contract to the U.S. Department of Energy. The Seller agrees to comply with FAR 52.222-26, Equal Opportunity (E.O. 11246); FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. § 4212(a)); and FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. § 793).

## **5.0 DISPUTES**

- (a) All disputes arising under or relating to this contract shall be resolved pursuant to the procedures of this clause. Any claim for the payment of a sum certain or other relief arising under or relating to this contract shall be made in writing by the claiming party to the other. Claims shall be subject to a written decision by the party against whom the claim is made within a reasonable time of submission. The Seller agrees to continue to perform this contract pending final resolution of any claims. The Seller shall have no right to stop work or otherwise fail to perform this contract in spite of pending claims and limits its rights to relief to equitable adjustment of the contract price and/or schedule. Negotiated resolution of all claims shall be memorialized in contract modifications. In the event the parties are unable to resolve any claims between them, the parties agree that in any court of competent jurisdiction to which the parties or either of them may resort for resolution of the matter, such matter will be tried without jury and on the written record as established through the procedures set forth herein. Provided, however, either party may by prior written exception except from trial on the written record any matter of fact which that party alleges is relevant and material to the claim and is in dispute between the parties. FDF shall not be liable for, and the Seller waives any claim or potential claim of the Seller which was not reported by the

Seller in accordance with the provisions of this clause prior to final payment. The Seller shall not be liable for, and FDF waives any claim or potential claim of FDF which was not made by FDF in accordance with the provisions of this clause prior to acceptance of the items of supply or service of this contract, except for such claims as FDF may have pursuant to any warranties applicable to this contract.

- (b) Irrespective of the place of performance, this contract will be construed and interpreted according to the Federal law of Government contracts as enunciated and applied by Federal Courts, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. To the extent that law is not dispositive of any issue arising under or relating to this contract, the law of the state of Ohio shall apply. In the event either party hereto files suit on account of any issue arising under or relating to this contract, each party consents to that action being filed in the court of competent jurisdiction in and for Hamilton County, Ohio.

## **6.0 EXCUSABLE DELAYS**

The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify FDF in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to FDF of the cessation of such occurrence.

## **7.0 FASTENER QUALITY ACT OF 1990**

The Fastener Quality Act of 1990 is applicable to all work performed under this contract. Counterfeit or suspect fasteners shall not be provided or incorporated as part of this contract. Additionally, if this contract requires on site use of equipment, counterfeit or suspect fasteners shall not be incorporated in critical subassemblies of this equipment. The Seller shall provide written certification of compliance with this clause upon request of FDF and shall comply with all record keeping laws of the Act.

## **8.0 INDEMNIFICATION FOR NUCLEAR SAFETY VIOLATIONS**

- (a) Applicability. The provisions of this clause shall be applicable if the Seller's product or service is subject to DOE Nuclear Safety Requirements or could have any effect on radiological safety.
- (b) The Seller assumes full responsibility and shall indemnify, save harmless, and defend FDF, its directors, officers and employees from any liability under Section 234A (42USC§2282a) or 223(c) (42USC§2273(c)) of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Seller, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Seller's obligation to indemnify and hold harmless shall expressly include attorneys fees' and other reasonable costs of defending any action or proceeding instituted under Section 234A or 223(c) or the implementing regulations.

## **9.0 INDEMNITY**

- (a) Seller agrees to defend, indemnify and hold harmless FDF and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and directors of each of them, from and against:
  - (1) Any claim, demand, cause of action, liability, loss or expense arising from Seller's actual or asserted failure to comply with any of the provisions of this contract;
  - (2) Any claim, demand, cause of action, liability, loss or expense arising from Seller's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any governmental or quasigovernmental body (including, but not limited to, the actual or asserted failure to pay taxes) including such failures by Seller, its subcontractors or suppliers; and
  - (3) Any claim, demand, cause of action, liability, loss or expense relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the goods or services provided under this contract, including the acts or omissions of Seller, its subcontractors or suppliers.
  - (4) Any claim, demand, cause of action, liability, loss or expense arising from any failure of Seller's computer software, hardware or systems, or of the software, hardware or systems incorporated in Seller's work, to adequately process data which contains or references dates later than December 31, 1999.
- (b) (1) If this contract is one for the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition and excavating connected therewith, then:
  - (i) Seller agrees to indemnify and hold harmless FDF and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and directors of each of them, from and against any claim, demand, cause of action, liability, loss or expense arising from personal injury (including death) or property damage, to the extent that such personal injury or property damage is caused by the negligence of Seller, its subcontractors or suppliers; and
  - (ii) Seller agrees to provide for the complete and unconditional defense of FDF and the Government, and any other parties indemnified under section (b)(1)(i), above, at Seller's expense, regardless of the proportionate fault of

the party to be indemnified, except where such personal injury or property damage was caused without any fault or negligence on the part of Seller, its subcontractors or suppliers.

- (2) For contracts not included in section (b)(1), above, Seller agrees to defend, indemnify and hold harmless FDF and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and directors of each of them, from and against all claims, demands, causes of action, liability, loss or expense arising from personal injury (including death) or property damage arising directly or indirectly out of the goods or services provided under this contract. The defense and indemnity obligations of Seller under this section (b)(2) extend to personal injury or property damage caused by Seller's subcontractors or suppliers, and include claims, demands, causes of action, liability, loss or expense arising under non-delegable duties of FDF or the Government or arising from Seller's use of equipment, tools or facilities of FDF or the Government. The defense and indemnity obligations of Seller under this clause (b)(2) apply in full regardless of any concurrent negligence or fault, whether active or passive, of any party to be indemnified, unless such personal injury or property damage arises solely from the negligence, fault or willful misconduct of the party to be indemnified.
- (c) Seller agrees that its indemnity obligations include the duty to reimburse attorneys' fees and expenses incurred by FDF or the Government for legal action to enforce Seller's indemnity obligations under this clause.

#### **10.0 INSPECTION/ACCEPTANCE**

The Seller shall only tender for acceptance those items or services that conform to the requirements of this contract. FDF reserves the right to inspect or test any supplies or services that have been tendered for acceptance. FDF may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. Unless otherwise specified in the contract, acceptance occurs when FDF takes possession of the items of supply tendered or when it approves of services performed.

#### **11.0 INVOICE**

The Seller shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (a) Name and address of the Seller;
- (b) Invoice date;
- (c) Contract number, contract line item number, if applicable, and the order number, if applicable;
- (d) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (e) Shipping number and date of shipment including the bill of lading number and weight of shipment, if shipped on FDF's bill of lading;
- (f) Terms of any prompt payment discount offered;
- (g) Name and address of official to whom payment is to be sent; and
- (h) Name, title and phone number of person to be notified in event of defective invoice.

#### **12.0 LIMITATION OF LIABILITY**

Except as otherwise provided by an express or implied warranty, the Seller will not be liable to FDF for consequential damages resulting from any defect or deficiencies in accepted items.

#### **13.0 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE through FDF, the Seller will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE through FDF may, however, at any time require in writing that the Seller provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Seller by DOE.
- (d) (1) Indemnification. To the extent that the Seller and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Seller and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Seller and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation

occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Seller, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession operation or use by the Seller or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Seller, on behalf of itself and other persons indemnified, agrees to waive:
    - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
      - 1. Negligence;
      - 2. Contributory negligence;
      - 3. Assumption of risk; or
      - 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
    - (B) Any issue or defense as to charitable or governmental immunity; and
    - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
  - (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
  - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Seller-owned or controlled facility, installation, or site at which the Seller is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
  - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
  - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - (v) Shall not apply to injury, to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

- (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under
  - (A) the limit of liability provisions under subsection 170e. of the Act, and
  - (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and Litigation of claims. The Seller shall give immediate written notice to DOE through FDF of any known action or claim filed or made against the Seller or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE through FDF, the Seller shall furnish promptly to DOE through FDF, copies of all pertinent papers received by the Seller or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Seller and any other person indemnified in the settlement or defense of any action or claim and shall have the right to
  - (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
  - (2) appear through the Attorney General on behalf of the Seller or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Seller or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Seller to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Seller, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Audit and Records - Negotiation, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Seller and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Seller or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Seller shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (l) To the extent that the Seller is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.

#### 14.0 ORDER OF PRECEDENCE

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) Solicitation /Contract/Order for Commercial Items form;
- (b) Section I - Terms and Conditions (including the specification/ statement of work, if any);
- (c) Section II - Representations and Instructions;
- (d) General Provisions for Commercial Items, including the On-Site Supplement, if applicable; and
- (e) Other documents, exhibits, and attachments.

#### 15.0 OTHER COMPLIANCES

The Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

## **16.0 PATENT INDEMNITY**

The Seller shall indemnify FDF, its parent, affiliates, subsidiaries and their officers, directors, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Seller is reasonably notified of such claims and proceedings.

## **17.0 PAYMENT**

Payment shall be made for items accepted by FDF that have been delivered to the delivery destination(s) set forth in this contract. FDF will make payment within thirty (30) days of invoice receipt. Payments under this contract may be made either by check, electronic funds transfer, or other automated means at the option of FDF. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

## **18.0 QUALITY ASSURANCE (QA) RULE PROGRAM COMPLIANCE (NOV 1999)**

- (a) Applicability. The provisions of this clause apply to any activity carried out pursuant to this contract by the Seller, its subcontractors, suppliers, and employees that has the potential to cause radiological harm unless specifically excluded by the Quality Assurance Rule (10 CFR 830.120) or by an approved exemption issued in accordance with 10 CFR Part 820.
- (b) The Seller shall: (1) comply with all applicable requirements of Title 10, CFR, Part 830.120, "Quality Assurance Requirements"; FDF's Quality Assurance Program (RM-0012, current edition, as revised from time to time), hereinafter referred to as "QAP"; and FDF's QA Rule Implementation Plan (PL-3029, current edition, as revised from time to time), hereinafter referred to as "QARIP" and (2) implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with FDF's QAP, QARIP, and the QA requirements section of this contract. In all cases, key criteria from the QAP and QARIP which apply to Seller work under this contract shall include organizational interfaces (Criteria 1, "Program") and reports and deliverables (Criteria 4, "Documents and Records"). The Seller's programs and associated documents are subject to review at all times by FDF.
- (c) For occasions where reporting to DOE is necessary, the Seller shall report through FDF via the programs identified in paragraph (b) of this clause.
- (d) The Seller shall include the provisions of this clause, including this paragraph (d), in all lower tier subcontracts for any activity that has the potential to cause radiological harm..

## **19.0 RADIOLOGICAL PROTECTION PROGRAM COMPLIANCE**

- (a) Applicability. The provisions of this clause apply to any activity carried out pursuant to this contract by the Seller, its subcontractors, suppliers, and employees that has the potential to result in the exposure of an individual to radiation or radioactive material. The term "individuals" as used in this clause includes, without limitation, general employees, radiological workers, embryo/fetus of a declared pregnant worker, minors, and members of the public. The requirements of this clause do not apply to activities that are regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission (an Agreement State), including activities certified by the Nuclear Regulatory Commission under Section 1701 (42 USC§2297(f)) of the Atomic Energy Act of 1954, as amended. Other specific applicability exclusions are identified in 10 CFR§835.1(b).
- (b) The Seller shall: (1) comply with all applicable requirements of Title 10, Code of Federal Regulations, Part 835, "Occupational Radiation Protection" (10 CFR Part 835), and FDF's Radiological Protection Program as set forth in FDF's "Implementation Plan and Radiological Protection Program for 10 CFR Part 835", current edition, as revised from time to time (hereinafter referred to as the "RPP"), and (2) implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with FDF's RPP including the maintenance of complete and accurate records in accordance with 10CFR§835. The Seller's programs and associated documents are subject to review at all times by FDF.
- (c) The Seller shall include the provisions of this clause, including this paragraph (c), in all lower tier subcontracts for any activity that has the potential to result in the exposure of an individual to radiation or radioactive material.

## **20.0 RISK OF LOSS**

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller until, and shall pass to FDF upon:

- (a) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (b) Delivery of the supplies to FDF at the destination specified in the contract, if transportation is f.o.b. destination.

## **21.0 SUSPECT OR COUNTERFEIT MATERIAL**

The Seller shall deliver items to FDF which conform to the specifications to which they are represented to be manufactured. The Seller shall not furnish any item or component that is manufactured with suspect or counterfeit materials, and/or components.



## **22.0 TAXES**

The contract price includes all applicable Federal, State, and local taxes and duties.

## **23.0 TERMINATION FOR CONVENIENCE OF FDF**

FDF reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of FDF using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give FDF any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## **24.0 TERMINATION FOR DEFAULT**

FDF may terminate this contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide FDF, upon request, with adequate assurances of future performance. In the event of termination for cause, FDF shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to FDF for any and all rights and remedies provided by law. If it is determined that FDF improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

## **25.0 TITLE**

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where FDF takes physical possession.

## **26.0 STOP-WORK ORDER**

- (a) FDF may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, FDF shall either
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Termination for Default, or the Termination for Convenience of FDF, clauses of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. FDF shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --
  - (1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if FDF decides the facts justify the action, FDF may receive and act upon a proposal submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of FDF, FDF shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, FDF shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **27.0 WARRANTY**

The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for any particular purpose described in this contract. In the event, as part of the price of the items and/or services contracted for hereby, the Seller provides warranties other than as stated above, Seller shall warrant the items and/or services according to those terms and conditions as well as those stated herein.

## **28.0 YEAR 2000 COMPLIANCE WARRANTY**

- (a) The Seller warrants that the products provided or systems developed under this contract are Year 2000 compliant. "Year 2000 compliant" means that the product:

- (1) Is able to process date data accurately - including date data Year 2000 recognition, calculations that accommodate same Year 2000 and multi-Year 2000 formulas and date values (including leap year factors), and date data interface values that reflect the Year 2000 - when used either in a stand-alone configuration or in combination with other Year 2000 compliant products.
  - (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.
- (b) In addition to any other warranties applicable to this contract or any remedies otherwise available to FDF, the Seller agrees to promptly repair or replace any product furnished under this contract that is not Year 2000 complaint, provided that FDF gives notice within a reasonable time following discovery of such failure.

#### **29.0 COMMERCIAL COMPUTER SOFTWARE**

FAR 52.227-19 is hereby incorporated by reference (applies if the contract is for or includes commercial software).

#### **30.0 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS**

FAR 52.219-8 is hereby incorporated by reference (applies if the price of the contract exceeds \$100,000).

#### **31.0 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**

FAR 52.219-9 is hereby incorporated by reference (applies if the price of the contract exceeds \$500,000).